BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANGELA DOWNS, Claimant, vs. MERCY MEDICAL CENTER, Employer, Self-Insured, Defendant.	:	File No. 22003197.02 ALTERNATE MEDICAL CARE DECISION Head note: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Angela Marie Downs.

This alternate medical care claim came on for hearing on November 30, 2022. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the Workers' Compensation Commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1-3, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization for the surgery recommended by Peter Chimenti, M.D.

FINDINGS OF FACT

Defendant accepts liability for a work-related accident on February 28, 2022, to claimant's left upper extremity, left hand and left thumb. Claimant testified it was her understanding the work-related injury resulted in a ruptured tendon in the left thumb.

Claimant testified that sometime in mid-September of 2022, she was evaluated by Dr. Chimenti for her left thumb injury. She said she did not recall Dr. Chimenti telling her, at that time, he had no further care to offer her in terms of surgical treatment. She

said she did not recall Dr. Chimenti telling her she was at maximum medical improvement (MMI).

On October 6, 2022, claimant was evaluated by Dr. Chimenti for her left thumb. Claimant had pain, stiffness, and decreased use of the thumb despite extensive postoperative therapy. Additional surgery was discussed as a treatment option. Claimant was assessed as having a left thumb trigger finger. (Exhibit 1)

Dr. Chimenti discussed a potential flexor pollicis longus (FPL) tenotomy and thumb interphalangeal (IP) joint fusion. Claimant had a prior FPL repair on March 9, 2022. Non-operative treatment was also discussed. Claimant was given an injection in the A1 pulley area and given a thumb splint. Claimant was to return in a month to discuss her progress after the injection. (Ex. 1)

Claimant's visit with Dr. Chimenti was documented in an October 12, 2022, email from Theresa VanMeighem, R.N., B.S.N., a nurse care manager for defendant. (Ex. 2, p. 4)

In a November 4, 2022, email to defendant, Nurse VanMeighem indicated she was unable to attend claimant's November 3, 2022, follow-up appointment with Dr. Chimenti. A co-worker attended the appointment and provided Nurse VanMeighem with notes from that meeting. Notes indicate claimant had a splint on the right thumb to mimic a fusion. Claimant had decreased pain but wanted to proceed with the fusion. Based on claimant's use of the thumb splint with a subjective report of decreased pain, Dr. Chimenti offered a fusion surgery to the left thumb. The notes indicate treatment recommendations included surgery to the left thumb. (Ex. 2, pp. 5-6)

In a November 9, 2022, letter, claimant's counsel requested authorization for Dr. Chimenti's recommendation of surgery to the left thumb. (Ex. 3, p. 7)

In a November 10, 2022, email, defense counsel indicated defendant was unwilling to provide authorization for the surgery and wanted to send claimant for an independent medical exam (IME). Defendant's counsel indicated Dr. Chimenti found claimant at maximum medical improvement (MMI) as of September 13, 2022. As a result, defendant wanted claimant to attend an IME. There are no medical notes in the record indicating Dr. Chimenti found claimant at MMI. (Ex. 3, p. 8)

Claimant testified that, at the time of hearing, she has little ability to use her left thumb. She said her left thumb lies in the palm of her hand. She said she is unable to use the left thumb to hold or grasp or pinch. Claimant said that, as a result, she has little ability to use her left hand.

Claimant testified she uses a thumb splint recommended by Dr. Chimenti. She said the splint allows her to use her thumb to some extent. She said she understands the splint to be a temporary measure and that fusion of the left thumb would allow her, again, to be able to use her left hand.

Claimant testified Dr. Chimenti recommended she have the fusion surgery. She said Dr. Chimenti did not tell her he was done treating her.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee and has the right to choose the care. . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P. 6.904(3)(e); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
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> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Defendant disputes the causal connection between claimant's work injury and the requested surgery to the thumb. Defendant argues that agency case law finds that this position is tantamount to a denial of liability and should result in a dismissal of the petition.

Defendant is correct that, in some circumstances, a denial of the causal connection between the requested alternate medical care and a work injury is a denial of liability resulting in dismissal of a petition. However, in this case, defendant lacks any evidence to support that position and all other evidence suggests the requested treatment is related to the work injury. Claimant testified Dr. Chimenti recommended a fusion surgery to the thumb. Medical records indicate Dr. Chimenti, the authorized provider, recommended the fusion surgery. The nurse case manager, working for defendant, also indicated in her notes that "Treatment Recommended" from Dr., Chimenti included "Surgery to the left thumb (FPL tenotomy and IP fusion)." (Ex. 2, p. 6)

Defendant also seems to contend Dr. Chimenti indicated in September of 2022 claimant was at MMI. Other than defense counsel's November 10, 2022, email, there is no record in evidence Dr. Chimenti found claimant at MMI in September of 2022. Even if that is the case, medical records from October 6, 2022, and November 3, 2022, indicate Dr. Chimenti was still actively treating claimant and recommended surgery. As noted, defendant's own case manager's notes reflect that recommended treatment consisted, in part, of a fusion surgery to the left thumb.

Defendant has known, since at least October 12, 2022, surgery was a treatment option for claimant. They have known since November 4, 2022, Dr. Chimenti was recommending surgery to treat claimant. It was not until November 10, 2022, that defendant questioned the causal connection between the recommended surgery and the accepted work injury and suggested sending claimant for an IME. There is no evidence in the record the recommended surgery is not causally connected to the accepted work-related injury. Claimant testified Dr. Chimenti recommended surgery. Records indicate Dr. Chimenti recommended the fusion surgery. Defendant's own nurse case manager's notes also indicate recommended treatment includes fusion surgery to the thumb. Given this record, it is found defendant's denial of care, recommended by the authorized treating physician, is unreasonable. Claimant has carried her burden of proof she is entitled to the requested alternate medical care.

ORDER

Therefore, it is ordered:

That claimant's petition for alternate medical is granted.

That defendant shall authorize and pay for the fusion surgery to claimant's thumb as recommended by Dr. Chimenti.

Signed and filed this ____1st____ day of December, 2022.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Casey Steadmann (via WCES)

Thomas Wolle (via WCES)